UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. KOU YANG, Defendant.	No. **CR01-3060-MWB** **REPORT AND RECOMMENDATION ON MOTION TO SUPPRESS**

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I. INTRODUCTION

This matter is before the court on the motion (Doc. No. 18) of the defendant Kou Yang to suppress evidence. Yang was indicted on October 23, 2001, on one count of possession of methamphetamine with intent to distribute. (Doc. No. 1) Yang filed his motion and a supporting brief (Doc. No. 19) on May 14, 2002. The plaintiff (the "Government") filed a resistance and supporting brief (Doc. Nos. 21 & 22) on May 21, 2002. Pursuant to the trial scheduling order entered April 16, 2002 (Doc. No. 12), motions to suppress in this case were assigned to the undersigned United States Magistrate Judge for the filing of a report and recommended disposition in accordance with 28 U.S.C. § 636(b)(1)(B). Accordingly, the court held a hearing on the motion on May 30, 2002, at which Assistant United States Attorney Kevin Fletcher appeared for the Government, and Yang appeared in person with his attorney, Assistant Federal Defender Priscilla Forsyth.

The Government offered the testimony of Iowa State Patrol Troopers Mark Anderson and David George Baker, and Iowa Falls Police Officer Wade Lee Harken. At the court's request, the parties prepared a stipulated transcript of a videotape of the traffic stop at issue in Yang's motion. (*See* Doc. No. 23) The videotape, an audiotape made from the videotape, and the stipulated transcript were admitted into evidence at the hearing as Government Exhibits 1A, 1B, and 1C, respectively. Also admitted into evidence were Government Exhibit 2, a single sheet containing copies of both a Consent to Search form, and a warning ticket issued to Yang for improper window tinting; Government Exhibit 3, a receipt issued to Yang from United Auto Glass in San Diego California, dated July 12, 2001; and Government Exhibit 4, a receipt issued to Yang from Firestone Tire & Service in El Paso, Texas, dated July 11, 2001. Yang submitted a supplemental brief on June 5, 2002 (Doc. No. 25).

The court has reviewed the parties' briefs and carefully considered the evidence, and now considers the motion ready for decision.

II. FACTUAL BACKGROUND

On July 17, 2001, at about 11:30 a.m., Trooper Mark Anderson was on stationary patrol at about the 157 mile marker on northbound I-35. Trooper Anderson was parked behind a bridge abutment using radar to check vehicles for speeding violations. He observed a two-door Honda Civic traveling northbound on I-35, going 58 miles per hour in a 65 mile per hour speed zone. As the vehicle passed him, Trooper Anderson noticed the driver's side window was totally dark; he could not even see a silhouette of the driver through the window, nor could he tell how many occupants were in the vehicle. The trooper pulled out, followed, and then stopped the vehicle, which he noted had Texas license plates. He approached the passenger-side front window, which the driver rolled down. The trooper then could tell there was one male occupant in the vehicle.

The driver produced a Minnesota driver's license showing his name as Kou Yang. While Yang was getting his driver's license out, Trooper Anderson noticed that in the front seat of the car were numerous food items (a partial loaf of bread, chips, lunch meat, grapes, orange juice containers), a cell phone, and an atlas. He saw a roll of toilet paper on the floor of the back seat. He also noticed there was only a single key on the key ring in the ignition.

After Yang produced his driver's license, Trooper Anderson asked for the vehicle registration and insurance verification. Yang volunteered that he had gone to Texas to purchase the vehicle, and he handed the trooper a certificate of title showing a 1994 Honda Civic registered to Thomas Ryan of Plano, Texas. The title had been signed over to Yang on the back, with a handwritten odometer reading of 187,000 miles. All the handwriting appeared to be the same except where Yang's name had been added to the title.

Trooper Anderson explained to Yang that he had been stopped because of the heavily tinted windows. He asked Yang to roll up the passenger's window a bit, and the trooper

tested the level of window tint with a tint meter. He told Yang that in Iowa, a window must let in at least 70% of the light. The window on the Honda let in 8%.

Trooper Anderson asked Yang to come back and sit in the patrol car while the trooper completed his paperwork on the stop. While they were waiting for a check of Yang's driver's license and the trooper was writing up a warning ticket, the trooper and Yang engaged in conversation about where Yang had been and his purchase of the car. Yang volunteered that his wife had seen the car on the Internet. Trooper Anderson asked Yang some questions about how he bought the car over the Internet, how much he paid for it, and the like. Responding to the trooper's questions, Yang said he had flown to Texas from Minneapolis, Minnesota, on July 10th or 11th, but then he corrected himself and said he left Minneapolis on the 11th, and then left Dallas on the 12th.

Still responding to questions, Yang said he paid $5,000 for the car. Yang sent the car's owner a money order for half of the purchase price, and then he flew down and met the owner at the Dallas airport to complete the transaction and take possession of the car. When Trooper Anderson mentioned that five days seemed a very long time to drive from Dallas to Iowa, Yang said he would drive a couple hundred miles, and then stop to rest so he would not get in an accident. He said he had stayed at small motels along the way, and had slept in a rest area in Missouri on the morning of July 12th.

Yang told the trooper that he is co-partner in a temporary agency in Minnesota, and he helps find people jobs. He said he needed to get home, but explained he was taking his time "[be]cause I can't drive that fast." Yang said he lives on the north side of Minneapolis, and described the area as not particularly nice, stating, "[I]f I have money I

wouldn't want to live there." Trooper Anderson asked if there was a lot of crime in the area, and Yang said no, but a lot of black people live there.[1]

At this point, the trooper issued a warning to Yang for the window tint. In the course of asking Yang to sign the warning, the trooper asked about the car's mileage. Yang said the car actually had more than 187,000 miles, but when he bid on the car over the Internet, it was advertised as having 180,000 miles. Yang then volunteered that he had made some repairs to the car after the purchase, including fixing a cracked windshield and repairing either a tire or a rim on the back wheel "somewhere in Texas."[2] Trooper Anderson continued to ask follow-up questions about Yang's trip to Texas, asking which airline he had taken (Delta), and what kind of deal he had gotten on the airline ticket. (Yang replied the ticket cost "$198 or something").

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[1]The transcript indicates Yang and the trooper had the following exchange:

Trooper:	So what part of Minneapolis do you live at?
Yang:	Un, north Minneapolis.
Trooper:	North?
Yang:	Yes.
Trooper:	Nice area?
Yang:	I mean, not really.
Trooper:	No?
Yang:	(laughs) I mean it's alright [sic], but you know, I mean if I have money I wouldn't want to live there.
Trooper:	A lot of crime and stuff or?
Yang:	It's like, I mean like more black people there. (Unintelligible).

Trooper Anderson testified Yang's response to his question about whether there was crime in his neighborhood was highly unusual, and raised his suspicion further about Yang. The trooper cited this response as one of the reasons he was concerned about Yang's activities.

It appears to the court that Yang's response regarding black people was a follow-up to his response about why he would not want to live in the area, rather than a direct response to the Trooper's question about whether there was a lot of crime in the area. The videotape supports this interpretation, showing the Trooper and Yang were talking over each other at that point.

[2]Yang told Trooper Anderson he had had the rim repaired, but Gov't Ex. 2, the Firestone receipt, shows the purchase of a new tire.

Trooper Anderson handed Yang the warning ticket, and Yang started to leave the patrol car. Yang said, "Thank you." Trooper Anderson said, "You bet," and then asked Yang if there would be any reason why somebody would say Yang was "hauling narcotics today." Yang replied, "No reason at all," and added that he smokes cigarettes but does not use drugs. Trooper Anderson asked if Yang had any type of drugs in the car, specifically mentioning cocaine, marijuana, heroin, and methamphetamine. Yang said he had seen people use drugs before, but he had no drugs with him.

At this point, Yang left the patrol car and walked toward his car. Trooper Anderson was still in the patrol car. The trooper testified that at this point in the traffic stop, he was suspicious of Yang for the following reasons:

1. He had never run into anyone before who had bought a car over the Internet and flown somewhere to pick it up. In his experience, people involved in criminal activity sometimes fly to other locations to pick up vehicles.

2. Yang was coming from Texas, which is a well-known source state for narcotics. People often pick up drugs in Texas and then transport them elsewhere.

3. Yang said he was in a hurry to get home, yet it had already taken him five days to drive less than 900 miles from Dallas to Iowa.

4. Yang had changed his story regarding his departure dates from Minneapolis and Dallas. It sounded like he was trying to change his time-line.

5. Yang had quite a bit of food and a roll of toilet paper in his car. The trooper explained that persons transporting narcotics frequently carry food and other items that will allow them to avoid stopping along the way. They do not like to stop in public places, and do not like to leave their vehicles unattended at any time, as would be required to go to an indoor restroom.

6. Yang had a cell phone and atlas in his front seat.

7. Yang had paid $2,500 up front as a down payment, without ever seeing the car, and to someone he did not know.

8. The car's license plates were not registered to Yang. People involved in criminal activity often use a "third party car" in an attempt to show they have no knowledge of what is in the vehicle.

9. Yang said he was in a hurry to get home, yet he was only driving 58 mph in a 65 mph zone.

10. The mileage written on the car's title was incorrect.

11. Yang had paid for repairs to the car right after buying it. People transporting narcotics do not want to get stopped because of minor problems with their vehicles.

12. Yang gave an uncommon answer when the trooper asked about crime in his neighborhood.[3]

13. Yang gave a very calm answer when the trooper asked if there was any reason someone would say Yang was hauling narcotics. The trooper said he usually gets a shocked response to that question from innocent people. He uses the question to see if he gets a suspicious answer.[4]

14. Yang gave a general "somewhere in Texas" answer to the trooper's question about where the tire had been fixed, which indicated to the trooper that Yang did not want to pinpoint the location where he had been.

15. Yang was driving a newly-purchased vehicle, and only had one key on the key ring. The trooper said sometimes people transporting narcotics will not have a trunk key to prevent them from getting into the trunk.

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[3]*But see* footnote 2, *supra.*

[4]The court noted during the hearing that officers frequently cite exactly the opposite; that is, their suspicions are raised when someone gives an agitated response to the same question.

Trooper Anderson admitted none of these items, standing alone, is indicative of criminal activity. For example, he agreed lots of people carry food, cell phones, and an atlas. However, he stated the combination of these factors made him suspicious of Yang. He agreed the information that gave rise to his suspicions primarily came from Yang's responses to his questions, which taken together with the Texas license plate and the items visible in the vehicle caused him to become concerned.

As Yang reached the driver's door of his car, Trooper Anderson opened the driver's door of the patrol car, got out, and yelled to Yang, and the following exchange took place:

> Trooper: Sir! You're free to go and all but I, would it be alright [sic] if I searched your car?"
>
> Yang: Yea –
>
> Trooper: Would that be alright [sic]? One second here if you would. I just have a piece of paper I'd like you to sign if you would for me. If that's okay. I'll show it here to ya. It's a consent to search form.
>
> Yang: Um-hum.
>
> Trooper: It's a consent to search form, giving me permission to search your vehicle if that's alright [sic].
>
> Yang: But I could just leave? Or what?
>
> Trooper: Yes, you can.
>
> Yang: Oh, then I'm just going to go.
>
> Trooper: You're just going to go?
>
> Yang: Yea.
>
> Trooper: You don't have nothing illegal with you though today? (Unintelligible) You don't want to sign this?
>
> Yang: What?
>
> Trooper: You don't want to sign this?
>
> Yang: I do not.

Trooper: This is for my office is what it's for, it's for my boss.

Yang: That's okay then.

Trooper: I mean . . . You got something taped to your chest there?

Yang: Yeah, I got a tattoo.

Trooper: Oh, you got a tattoo? A new one?

Yang: Yeah, a new one.

Trooper: They put tape over it?

Yang: They put (unintelligible) Saran Wrap.

Trooper: Oh wow!

Yang: It's a dragon tattoo.

Trooper: Painful?

Yang: Yeah, it's okay.

Trooper: Like I said, this is just a consent to search form. It's like what says that I could do it, it's just for my office, for my boss. Um, if that's all right, I'll just have you sign by the star, but you don't have to either if you don't want to.

Yang: I don't, but I can open the trunk (unintelligible) everything and you can see it.

Trooper: You just don't want to sign?

Yang: No.

Trooper: But it's all right if I search your vehicle though?

Yang: Yeah, open the . . .[5]

Trooper: Yeah? Okay. Did you run into rain on the way up?

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[5]The transcript at this point indicates Yang's response to Trooper Anderson's question, "But it's all right if I search your vehicle though?" was simply "Yeah." The court has viewed the videotape repeatedly and it is clear Yang spoke at least three words at this point, before he was cut off by Trooper Anderson's next comment. It sounds to the court as though Yang's words were, "Yeah, open the. . . ."

Yang: Yeah.

Trooper: Yeah? Just for my safety, if it's alright [sic] with you, if you could just stand right over here a little bit.

Yang opened the trunk and Trooper Anderson began searching through the trunk. About this time, Trooper David Baker arrived at the scene. Trooper Anderson finished searching the trunk, in which he found nothing incriminating. He then turned toward Yang and said, "All right if I look? That okay?" while gesturing toward the passenger door of the car. The trooper testified that Yang nodded his head in assent.[6] Trooper Anderson searched through the passenger side of the car, and then walked around to the driver's side. In the side pocket of the driver's door, Trooper Anderson saw a yellow paper sticking out. He picked the paper up and saw it was a receipt from an auto glass shop in San Diego, California, dated July 12, 2001. There was also a white receipt from a Firestone store in El Paso, Texas, dated July 11, 2001. The receipts indicated to Trooper Anderson that Yang had been lying about where he had been and when.

Trooper Anderson asked Yang if he had been in California, and Yang said he had driven to San Diego from Dallas, to visit his mother. He said he had not told Trooper Anderson "every little step by step" detail of his trip. Trooper Anderson testified that Yang began to appear a little nervous at this point, whereas he had been extremely calm throughout the traffic stop up to that point. Yang began talking more quickly, his voice seemed agitated, and he crossed his arms across his body.

Trooper Anderson continued to search Yang's vehicle, eventually returning to the passenger side. He found a set of new screwdrivers in the door pocket. The trooper asked Yang why he had purchased the screwdrivers, and Yang replied that he had locked the key in the car the day he left Dallas, and he bought the screwdrivers to open the door because he did not want to spend money to hire a locksmith.

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[6]Yang is not visible on the videotape at this point.

Trooper Anderson and Trooper Baker decided they would call a K-9 unit from Iowa Falls to come to the scene. The K-9 unit was requested at approximately 12:00 p.m., about thirty minutes after the traffic stop had begun. After they called for the K-9 unit, Trooper Anderson returned to his search of the vehicle.

Yang told Trooper Baker he wanted to leave the scene and "get going." Trooper Baker called Trooper Anderson over and told him Yang had a question. Yang asked Trooper Anderson if he was through searching, again saying he wanted to leave. Trooper Anderson replied that he was concerned Yang might be transporting narcotics because his story did not make sense. He said they had a K-9 unit on the way and asked Yang "if it would be okay" if they waited for the K-9 unit to arrive. Yang said they had searched long enough and he wanted to go. The troopers told Yang he could leave, but they were going to detain the car until the K-9 unit arrived.[7] Trooper Baker offered to give Yang a ride to a nearby truck stop, about seven miles away, but Yang declined.

The K-9 unit arrived at the scene at about 12:30 p.m. Officer Wade Harken of the Iowa Falls Police Department was the K-9 handler. The dog indicated on both the exterior and interior of the car. The troopers told Yang the dog had indicated on the car, they were going to search the car further, and if they failed to find anything, they would release the car to Yang. The troopers decided to move the car to a safer location to continue the search. Yang agreed to drive the car to the truck stop about seven miles to the north. When Yang tried to start the car, it would not start, so Trooper Baker went to the truck stop to get jumper cables. After they got the car started, Troopers Anderson and Baker, Yang, and Officer Harken all drove to the truck stop in their separate vehicles. The officers showed Yang where they wanted him to park the car.

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[7]Trooper Baker initially told Yang he was being detained, as well, but immediately thereafter, Trooper Anderson contradicted Trooper Baker and told Yang he could leave but the vehicle was being detained.

Almost immediately after arriving at the truck stop, Yang got out of the car and walked towards the truck stop. Trooper Anderson saw Yang go toward the entry doors to the restaurant area. The officers resumed their search of the car, including taking apart some panels and looking through the tops of the windows. They still did not find any contraband, and they put everything back together as it had been. Trooper Anderson went to the truck stop to find Yang, intending to tell him that he could leave, but he was unable to find Yang. The officers checked the restroom areas, shower stalls, restaurant, and outside areas, but still could not find Yang. The truck stop employees said they had seen Yang come in and then leave, and he had not returned. The officers' inability to locate Yang heightened their concerns about Yang's activities. They searched the vehicle further, but still found nothing.

Trooper Anderson filled out a tow sheet and inventory of the vehicle, and placed a "no hold" on it, meaning Yang could pick up the vehicle at will. The troopers also told the truck stop personnel that if Yang arrived, he was free to take the vehicle. The troopers left the vehicle at the truck stop somewhere between 5:00 p.m. and 6:00 p.m. The truck stop owner moved Yang's vehicle to a secured and locked metal shed for storage. Therefore, if Yang had stopped by to try to pick up the car, he would not have been able to see the car anywhere at the location.

The next day, July 18th, Trooper Anderson decided to apply for a search warrant to search the vehicle again. He obtained a search warrant,[8] went back to the truck stop, and continued his search, eventually locating a black plastic bag hidden in the speaker compartment of the passenger door which contained approximately one and one-half pounds of methamphetamine. After finding the drugs, the trooper got another search warrant for

[8]Issuance of the search warrant is not at issue in this case, except to the extent, if any, that the basis for the warrant could be the fruits of prior illegal activity by the officers.

the paperwork items in the vehicle. He found additional receipts showing purchases in California and New Mexico, on dates conflicting with Yang's story about his travels.[9]

III. DISCUSSION

A. Framing the Issues

Yang seeks to suppress all evidence located during the search of his vehicle. In his motion, Yang argues Trooper Anderson's questions regarding Yang's purchase of the vehicle and the details of his trip were improper, citing *United States v. Belcher*, 288 F.3d 1068 (8th Cir. 2002) (discussed below). In addition, although he states in his motion that the original search of the car by Trooper Anderson was consensual, he claims the consensual encounter ended when he indicated he thought the troopers had "searched enough," and said he wanted to leave. He therefore argues the further detention of his vehicle until the K-9 unit arrived was illegal, and the evidence ultimately found in the vehicle should be suppressed as fruit of the poisonous tree.

Evidence elicited during the hearing on Yang's motion, including the videotape itself, revealed possible further grounds to invalidate the search of Yang's vehicle. The court allowed the parties to file supplemental briefs, and in Yang's brief, he raises the issue of whether he consented to the search in the first place. The Government, on the other hand, has dismissed this additional argument out of hand, arguing Yang "waived" the argument by stating, in his motion, that the initial search was consensual. The Government has, therefore, provided no authorities whatsoever on the issue of whether Trooper Anderson's continued conversation with Yang after he indicated he was going to leave either constituted an unlawful detention or somehow tainted Yang's consent to the original search.

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[9]There is no evidence of record, either at the suppression hearing or the detention hearing, regarding when, where and how Yang ultimately was arrested.

The court agrees that Yang's motion failed to raise the issue of whether the initial search was consensual. The court does not, however, agree that he thereby waived the contrary argument when the evidence adduced at the hearing clearly raised the issue.

The issues apparent from the evidence are most easily analyzed in terms of the time-line of the traffic stop and subsequent events. The first issue, which requires very little discussion, is whether Trooper Anderson had the authority to stop Yang's vehicle at all. Clearly, he did. From the Trooper's experience, he could tell the window tint was darker than Iowa law allows.[10] The court finds the Trooper's belief that the truck's window tinting violated Iowa law was objectively reasonable and constituted probable cause for the traffic stop. *See Whren v. United States*, 517 U.S. 806, 810, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89 (1996) ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."); *United States v. Lyton*, 161 F.3d 1168, 1170 (8th Cir. 1998) ("Any traffic violation, even a minor one, gives an officer probable cause to stop the violator.").

The remaining issues are more problematic and require more detailed discussion. These issues include the following:

1. Did Trooper Anderson exceed his authority in his questioning of Yang from the time the trooper stopped the vehicle until the time he handed Yang the warning ticket and Yang started to leave?

2. Was Yang detained illegally after he said he was going to leave?

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[10] A person shall not operate a motor vehicle equipped with a front windshield, a side window to the immediate right or left of the driver, or a side-wing forward of and to the left or right of the driver which is excessively dark or reflective so that it is difficult for a person outside the motor vehicle to see into the motor vehicle through the windshield, window, or sidewing. . . .

IOWA CODE ANN. § 321.438(2) (1983)

3. Was Yang's consent to a search of the car valid, and if so, did that consent cure any unlawful detention that may have occurred prior to the consent?

4. Did the officers have the right to detain the car to await the arrival of the K-9 unit, and to continue their warrantless search of the car after Yang said they had "searched enough" and he wanted to "get going"? Further, is the answer to this question even relevant to the suppression determination, given that the officers found nothing incriminating during their warrantless search of the car?

5. Should the evidence located in the search pursuant to the warrant be suppressed as fruit of the poisonous tree?

B. Scope of Trooper Anderson's Questioning

Citing *Belcher*, *supra*, Yang argues Trooper Anderson exceeded his authority in asking Yang questions about his purchase of the car and the details of his trip. He argues further that because Trooper Anderson's suspicions arose as a result of Yang's responses to these illegal questions, the trooper never had probable cause to press Yang to consent to a search of his car. If Yang is correct, then it logically follows the troopers would not have obtained information that could form the basis for a search warrant, and the fruits of the search pursuant to the warrant should be suppressed.

Under *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), and its progeny, officers clearly have the authority during a valid traffic stop to engage the vehicle's occupants in non-invasive conversation about what they are doing, where they are going, and the like. In *Belcher*, however, the court found the officer's questions were not reasonably related to the purpose of the initial stop. The relevant facts of the case provide a context for discussing the opinion:

> After Andrew Walters and Garfield Belcher's truck stopped at a weigh station, Sergeant Tim Culver of the Arkansas Highway Police asked to review their log book and to

> see their bills of lading. Upon reviewing the log book, Sergeant Culver pressed them again for their bills of lading, but they gave evasive responses, finally admitting that they did not have any. Sergeant Culver then inquired about their prospects for picking up a load, and he found suspicious their explanation that they were headed to Little Rock to call a broker about one. When Sergeant Culver requested permission to search the truck, the defendants refused, whereupon he asked for a dog to be brought to the scene. After the dog alerted by scratching the driver's door and the rear of the truck, Sergeant Culver and another officer searched the truck and found almost 1400 pounds of marijuana.

Belcher, 288 F.3d 1068.[11]

The district court denied the defendants' motion to suppress, and the Eighth Circuit Court of Appeals reversed, finding the warrantless search violated the Fourth Amendment. The court noted Arkansas law allows law enforcement officers to stop and inspect carriers to determine their compliance with rules and regulations governing equipment safety. However, although the Arkansas statute allows officers to inspect certain safety-related documents, the statute only permits officers to ask for and inspect bills of lading when they have a reasonable belief that a vehicle is being operated in violation of Arkansas law. Therefore, the court held Sergeant Culver's request for bills of lading as soon as the truck pulled into the weigh station violated the terms of the regulatory statute. *Belcher*, *supra*, at § I.

Thus, the initial basis for the court's opinion was the language of the Arkansas statute. However, the court went on to explain:

> Even if Sergeant Culver's inquiries were not presumptively unreasonable because of their illegality under Arkansas law, ***we see no basis for a conclusion that his questions were reasonably related to the purpose of the initial stop.***

In *United States v. Holt*, 990 F.2d 412, 416 (8th Cir. 1993), we held that

[11]Publication page references are not yet available for this case.

an officer who stopped a vehicle for a traffic violation was permitted to ask for the driver's license and to inquire about the driver's destination and purpose. These inquiries were permissible in that case because they were "reasonably related to ascertaining" the reasons for the defendant's "erratic driving" and to averting dangers that he might pose to others on the road. *Id.* In contrast, Sergeant Culver's suspicionless inquiries about the goods in the defendants' truck, in our view, have almost no relation, if any, to determining whether defendants and their truck were in compliance, in the words of the statute, with regulations having to do with "safety of operations and equipment," Ark. Stat. Ann. § 23-13-217(c)(1). It is hard to see, moreover, how such suspicionless inquiries can be reasonably related to ensuring compliance with a regulatory scheme when the very scheme itself prohibits them.

> Because Sergeant Culver's questions were unreasonable and because he had no reason to suspect criminal activity before asking them, his continued detention of the truck after the purpose of the stop had been satisfied violated the fourth amendment. Defendants' evasive responses to Sergeant Culver's inquiries for bills of lading and their painstaking attempts to explain why their truck had no goods might well have raised a reasonable suspicion of criminal activity. *Cf. United States v. Johnson*, 285 F.3d 744, 745-48 (8th Cir. 2002). But when these statements are excluded from the factual mix, as they must be because they were made in response to unreasonable questions, Sergeant Culver did not have a sufficient basis for detaining the truck: All he knew was that the truck had not been in service for a week and that it was from out of town. These facts are insufficient to give rise to a suspicion of criminal activity because they do not distinguish the defendants from "a very large category of presumably innocent travelers," *Reid v. Georgia*, 448 U.S. 438, 441, 100 S. Ct. 2752, 65 L. Ed. 2d 890 (1980) (*per curiam*).
>
> In short, we are inclined to view that what began as a regulatory stop, as a result of Sergeant Culver's unreasonable inquiries, turned into a stop for the purpose of general crime control. But the Supreme Court has warned that administrative stops must not be allowed to become pretexts for "general crime control" or occasions "for the ordinary enterprise of

> investigating crime." *See City of Indianapolis v. Edmond*, 531 U.S. 32, 41-44, 47, 121 S. Ct. 447, 148 L. Ed. 2d 333 (2000).

Id. (emphasis added).

Yang argues *Belcher* is particularly relevant in the present case because he was stopped for a minor violation, unrelated to the way he was driving, and Trooper Anderson's questions went beyond the scope of the traffic stop. Yang distinguishes *Barahona*, cited by the *Belcher* court, as well as all of the cases cited by the Government on the basis that in those cases, a traffic stop was initiated due to some type of violation relating to how the defendant was driving. *See*, *e.g.*, *United States v. Foley*, 206 F.3d 802 (8th Cir. 2000) (speeding and changing lanes without signaling); *United States v. Martinez*, 168 F.3d 1043 (8th Cir. 1999) (following too close; unsafe passing); *United States v. Carrate*, 122 F.3d 666 (8th Cir. 1997) (inoperative headlight, speeding). In each of these cases, the court held the officers had reasonable grounds to expand the scope of their questioning beyond just asking for license and registration, for the purpose of investigating activities that, in their training and experience, seemed suspicious.

Yang argues that in this case, he was not operating his vehicle in an unsafe manner, and there was no reason for Trooper Anderson to question him beyond asking for his driver's license and registration.

Factually, the court finds this case is more similar to *Martinez* than to *Belcher*. In *Martinez*, the defendant was stopped for following too close and unsafe passing. When the officer requested license and registration information, the defendant produced an out-of-state driver's license and an incomplete bill of sale for the car. The defendant explained he had flown from Indiana to California to buy the car for $2,000, and he was on his way back to Indiana. The officer's suspicion was raised somewhat when he learned, in response to a criminal history check, that the defendant had a prior conviction for transporting illegal aliens, and that he had used another name. The officer returned the defendant's license and

asked more questions about the vehicle purchase. The defendant's answers were inconsistent and heightened the officer's suspicions, so he asked for consent to search the defendant's car, ultimately locating several pounds of methamphetamine.

The defendant moved to suppress the evidence, arguing, among other things, that the officer lacked reasonable suspicion to continue to question him after returning his license and issuing the citations. The court held the defendant's

> nervousness and apparent inconsistent answers to [the officer's] questions, certain details appearing on the bill of sale [the defendant] had presented, and the information obtained from the license check gave rise to reasonable suspicion sufficient to permit further questioning. *See United States v. Ramos*, 42 F.3d 1160, 1163 (8th Cir. 1994); *see also United States v. McManus*, 70 F.3d 990, 993 (8th Cir. 1995).

Martinez, 168 F.3d at 1047. Further, the court held that asking to search the defendant's vehicle "was not itself a violation of the Fourth Amendment." *Id.* (citing *United States v. White*, 81 F.3d 775, 778-79 (8th Cir. 1996)).

In the present case, the court finds Trooper Anderson's questions did not violate *Belcher* and were not unreasonable. Trooper Anderson's questions were in the nature of "casual conversation or light banter," *see United States v. Rivera*, 906 F.2d 319, 322 (8th Cir. 1990), and were a natural follow-up to Yang's voluntary statements about going to Texas to buy the car. The trooper did not, for example, begin asking Yang about where he got the money to purchase the car, or tangential questions about Yang's business. He confined his questions to the area of conversation opened by Yang, and then asked more probing questions, such as what airline Yang had taken, when his suspicion was raised by Yang's responses. When responses to initial questioning are inconsistent or otherwise raise reasonable suspicion, an officer is justified in broadening the scope of the inquiry to satisfy those suspicions. *United States v. Morris*, 910 F. Supp. 1428, 1441 (N.D. Iowa 1995) (Bennett, J.) (citing *United States v. Johnson*, 58 F.3d 356, 357-58 (8th Cir. 1995); *United*

States v. Ramos, 42 F.3d 1160, 1163 (8th Cir. 1994); *United States v. White*, 42 F.3d 457, 460 (8th Cir. 1994); *Terry, supra*, 392 U.S. at 20, 88 S. Ct. at 1879)); *Rivera, supra*. The court finds Trooper Anderson's suspicions were reasonable and allowed him to question Yang about his activities.[12]

C. Detention and Consent Issues

The next two issues are intertwined, and present the most problematic area of inquiry. As recited above, after Trooper Anderson handed Yang the warning ticket, Yang began to leave. As he reached his vehicle, Trooper Anderson stopped him, called him back, and asked if he could search Yang's vehicle, asking Yang to sign a consent-to-search form. Yang asked, "But I could just leave? Or what?" Trooper Anderson answered, "Yes, you can," and Yang said, "Oh, then I'm just going to go." It is clear on the videotape that Yang actually began to walk away at this point.

However, rather than allowing Yang to leave, Trooper Anderson continued to engage Yang in conversation, asking, "You're just going to go?" Yang responded, "Yeah," but Trooper Anderson continued asking Yang questions. He asked if Yang was carrying anything illegal, and asked about Yang's tattoo. The trooper also lied to Yang, repeatedly telling him the consent-to-search form was just something he needed for his boss. Although Yang still refused to sign the form, he ultimately said the trooper could look in his trunk, and then apparently assented to a search of the inside of the car.[13]

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[12]However, as discussed further *infra*, it does not follow from this conclusion that the trooper's suspicions were sufficient to form probable cause for a warrantless search of Yang's vehicle, or to detain Yang further once his responses failed to indicate any criminal activity was afoot.

[13]Although Yang cannot be seen in the videotape at this time, there is no evidence in the record to contradict Trooper Anderson's testimony that Yang nodded his head in assent when the trooper asked if he could look inside the car.

1. Was Yang illegally detained?

Once the initial purpose of the traffic stop had been satisfied by issuance of the warning ticket, Trooper Anderson could not detain Yang further "unless events that transpired during the traffic stop gave rise to reasonable suspicion to justify [the] renewed detention[.]" *United States v. Beck*, 140 F.3d 1129, 1136 (8th Cir. 1998) (Bennett, J., sitting by designation). The court must determine, in light of the totality of the circumstances, "[w]hether the particular facts known to the officer amount[ed] to an objective and particularized basis for a reasonable suspicion of criminal activity." *Id.* (internal quotation marks, citations omitted). If the answer is yes, then Trooper Anderson was justified in detaining Yang further after telling Yang he could leave.

The *Beck* court was faced with a similar dilemma. In that case, an Arkansas police officer saw a green Buick with California license plates following another vehicle too closely. The officer stopped the Buick to issue a traffic citation. The driver, Beck, produced a driver's license and a rental agreement for the car. The officer observed Beck's hands shaking, and Beck appeared nervous. The officer also saw "fast food trash" on the front passenger floorboard. He saw a briefcase in the back seat, but there was no luggage inside the car. A check of Beck's license showed it was valid, and Beck had no criminal history. The officer returned Beck's driver's license and the rental agreement, gave him a verbal warning for following too closely, and told Beck he was free to go, after which the following events occurred:

> Officer Taylor then turned, [and] started to walk back to his patrol car before stopping and asking Beck if he had any guns, drugs, or knives in his automobile. Beck turned, stared out the window, and said, "no." Officer Taylor than asked Beck if he could conduct a quick search of Beck's Buick. Beck became more nervous and asked Officer Taylor why he wanted to search his automobile. Beck told Officer Taylor that he was just trying to get to North Carolina for a job. Officer Taylor responded by telling Beck that he was just trying to ascertain if

> Beck had any firearms or drugs in the car. Beck again replied, "No, no." Beck and Taylor engaged in further discussion over why Officer Taylor wanted to search Beck's automobile. Officer Taylor, in Beck's presence, radioed for Officer Tom Knopp, who is a K-9 officer, to assist hm at the scene. Officer Knopp, who had been monitoring police radio transmissions, was already on his way to the scene of the stop with his drug dog.
>
> After calling for Officer Knopp, Beck and Officer Taylor resumed their colloquy concerning Beck's consent to a search of his automobile, with Beck wanting to know what would happen if he refused to consent. Officer Taylor answered Beck's question by telling him that while no search would occur, a drug dog would be led around the outside of Beck's Buick. Beck then replied, "Well, no." At this juncture, Officer Knopp and his drug dog arrived on the scene. Officer Taylor motioned to Officer Knopp that he wanted Officer Knopp to get [the dog] out. Officer Taylor then instructed Beck to get out of his automobile and to stand to the side of the car. Beck complied with Officer Taylor's instructions and exited the Buick.

Beck, 140 F.3d at 132. When the drug dog indicated on the car, Officer Taylor advised Beck of his *Miranda* rights, and asked if Beck had anything illegal in the car. Beck said "yes," and pointed toward his briefcase, which was found to contain several plastic baggies of methamphetamine. Additional methamphetamine was discovered in the car's trunk.

Beck moved to suppress the methamphetamine, arguing the length of the traffic stop was excessive and constituted an illegal detention after Officer Taylor said he was free to go. The district court denied the motion, and Beck appealed. The Eighth Circuit reversed, finding the consensual nature of the encounter between Beck and Officer Taylor became an investigatory detention when Officer Taylor called for the K-9 unit and told Beck he was going to have a drug dog sniff Beck's car. The court held a reasonable person in Beck's

situation would not have felt free to leave. *Beck*, 140 F.3d at 1135-36 (citing *United States v. Finke*, 85 F.3d 1275, 1281 (7th Cir. 1996)).

In *Beck*, the district court "was troubled by the issue of whether Officer Taylor had reasonable suspicion to detain Beck after informing him that he was free to go." *Beck*, 140 F.3d at 1136. The Government contended reasonable suspicion arose from seven factors:

> (1) Beck was driving a rental car which had been rented by an absent third party; (2) the Buick was licensed in California; (3) there was fast food trash on the passenger side floorboard; (4) no visible luggage in the passenger compartment of the automobile; (5) Beck's nervous demeanor; (6) Beck's trip from a drug source state to a drug demand state; and (7) Officer Taylor's disbelief of Beck's explanation for the trip.

Beck, 140 F.3d at 1137. The Eighth Circuit recognized that what may appear to be innocent conduct to an untrained observer "might acquire significance when viewed by an agent who is familiar with the practices of drug smugglers and the methods used to avoid detection." *Id.* (citing *United States v. Wallraff*, 705 F.2d 980, 988 (8th Cir. 1983)). Nevertheless, the court noted "it is 'impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation.'" *Id.* (quoting *United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997), in turn quoting *Karnes v. Skrutski*, 62 F.3d 485, 496 (3d Cir. 1995)). The court held "the totality of these circumstances fails to generate reasonable suspicion to warrant Beck's renewed detention." *Id.*

Similarly, in the present case, the court finds Trooper Anderson had no "concrete reasons" for suspecting Yang of criminal activity, but rather was acting on a "hunch." The trooper's intuitive suspicion cannot form the basis for continued detention after the purpose for the traffic stop had been fulfilled. *See Beck*, 140 F.3d at 1136. Trooper Anderson failed to provide "concrete reasons" for his interpretation that the "combination of wholly innocent

factors" he cited as cause for his suspicions somehow "combine[d] into a suspicious conglomeration."[14] *See Beck*, 140 F.3d at 1137.

Thus, we again have arrived at the question of whether Yang was unlawfully detained at either of two points prior to the search. The first point occurred after Trooper Anderson told Yang he was free to go, Yang walked up to his car, and then Trooper Anderson called him back to ask for consent to search. The second point occurred when Trooper Anderson told Yang he did not have to consent to a search and could leave, Yang said he was going to leave, and Trooper Anderson continued to engage him in conversation, attempting to persuade him (including by the use of subterfuge regarding the consent form) to consent to a search.

The court finds Yang was unlawfully detained at both of these points. At the first point, the traffic stop had been concluded and Yang was leaving. When Trooper Anderson called out to him to ask if he could search Yang's car, Yang responded with what sounds like "Yeah?" Trooper Anderson interpreted the response to mean yes, he could search the car, and the trooper then asked Yang if he would sign a consent form. It seems more likely from the tone of Yang's voice and the progression of events that he was merely responding with a word of inquiry about what the trooper wanted, rather than consenting to the search. In any event, the court finds that "although the detention was of a relatively short duration, it nevertheless unreasonably extended [the traffic stop] beyond the length necessary for its only legitimate purpose – the issuance of a citation for a [window tinting] violation." *United States v. Walker*, 933 F.2d 812, 815 (10th Cir. 1991) (internal quotation marks and citation omitted).

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[14]Trooper Anderson testified that when Yang was about to leave, Anderson realized he still was suspicious of Yang. The court is doubtful that many of the reasons advanced by Trooper Anderson for his suspicions were justified (*see* pages 6-7, *infra*), but even if Trooper Anderson's suspicions justified further inquiry of Yang, they did not justify further detention of Yang after he had been told he was free to leave or after Yang stated he wanted to leave.

At the second point, Yang unequivocally stated he was not going to sign the consent-to-search form and was going to leave. As he started to walk away, Trooper Anderson called him back, once again, and continued trying to convince him to sign the consent form. Even if the length of Yang's detention had not become excessive at the first point, it clearly was excessive by this point, and the court finds the continued detention to be unlawful. *See id.* However, this does end the inquiry, because if Yang's consent to the search was given voluntarily, without coercion, then his consent would purge the taint of the brief illegal detention. As the court explained in *United States v. McGill*, 125 F.3d 642 (8th Cir. 1997):

> Even if consent is the result, in a "but for" sense, of a Fourth Amendment violation, the consent will validate a subsequent search if the consent is "sufficiently an act of free will to purge the primary taint." *United States v. Ramos*, 42 F.3d 1160, 1164 (8th Cir. 1994) (quoting *Wong Sun[v. United States]*, 371 U.S. [471,] 486, 83 S. Ct. [407,] 416-17[, 9 L. Ed. 2d 441 (1963)]), *cert. denied*, 514 U.S. 1134, 115 S. Ct. 2015, 131 L. Ed. 2d 1013 (1995); *accord United States v. Thomas*, 83 F.3d 259 (8th Cir. 1996).

Id., 125 F.3d at 644. *Accord United States v. Beason*, 220 F.3d 964, 967 (8th Cir. 2000) ("even if we were to assume the officers lacked reasonable suspicion to stop the truck and that the subsequent detention was unreasonable, [the defendant's] consent to search the truck was 'sufficiently an act of free will to purge the primary taint.'") (citing *United States v. Kreisel*, 210 F.3d 868, 869 (8th Cir. 2000); *United States v. Beatty*, 17 F.3d 811, 813 (8th Cir. 1999)). Thus, the court turns to consideration of whether Yang's consent was voluntary.

2. Was Yang's consent to the search voluntary?

"The Fourth Amendment test for a valid consent to search is that the consent be voluntary, and '[v]oluntariness is a question of fact to be determined from all the circumstances[.]'" *Ohio v. Robinette*, 519 U.S. 33, 39, 117 S. Ct. 417, 421, 136 L. Ed. 2d 347 (1996) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49, 93 S. Ct. 2041, 2059, 36 L. Ed. 2d 854 (1973)). "[I]t is only by analyzing all the circumstances of an individual consent that it can be ascertained whether in fact it was voluntary or coerced[,]" and this analysis requires "careful sifting of the unique facts and circumstances of each case." *Schneckloth, supra*, 412 U.S. at 233, 93 S. Ct. at 2050.

In *United States v. Chaidez*, 906 F.2d 377 (8th Cir. 1990), the court set out standards for analyzing whether a consent to search was given voluntarily:

> Even when police officers have neither probable cause nor a warrant, they may search an area if they obtain a voluntary consent from someone possessing adequate authority over the area. *United States v. Matlock*, 415 U.S. 164, 171 & n.7, 94 S. Ct. 988, 993 & n.7, 39 L. Ed. 2d 242 (1974); *Schneckloth v. Bustamonte*, 412 U.S. 218, 222, 93 S. Ct. 2041, 2045, 36 L. Ed. 2d 854 (1973). Moreover, a voluntary consent need not amount to a waiver; consent can be voluntary without being an "intentional relinquishment or abandonment of a known right or privilege." *Id.* at 235, 93 S. Ct. at 2052 (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 1023, 82 L. Ed. 1461 (1938)). Rather, the proper test is whether the totality of the circumstances demonstrates that the consent was voluntary. *See id.* at 226, 93 S. Ct. at 2047. In deciding whether a consent was voluntary, courts should require the prosecution to prove voluntariness by a preponderance of the evidence. *See Matlock*, 415 U.S. at 177, 94 S. Ct. at 996.
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> Chaidez's consent was voluntary if it was "the product of an essentially free and unconstrained choice by its maker," *Bustamonte*, 412 U.S. at 225, 93 S. Ct. at 2047, rather than

"the product of duress or coercion, express or implied." *Id.* at 227, 93 S. Ct. at 2047. This determination depends upon the totality of the circumstances in a particular case, including "both the characteristics of the accused and the details of the interrogation." *Id.* at 226, 93 S. Ct. at 2047.

The following characteristics of persons giving consent are relevant when assessing the voluntariness of their consent: (1) their age, *id.* at 226, 93 S. Ct. at 2047; *Haley v. Ohio*, 332 U.S. 596, 599, 68 S. Ct. 302, 303, 92 L. Ed. 224 (1948); (2) their general intelligence and education, *United States v. Watson*, 423 U.S. 411, 425, 96 S. Ct. 820, 828, 46 L. Ed. 2d 598 (1976); *Bustamonte*, 412 U.S. at 226, 93 S. Ct. at 2047; *Payne v. Arkansas*, 356 U.S. 560, 567, 78 S. Ct. 844, 849, 2 L. Ed. 2d 975 (1958); *Fikes v. Alabama*, 352 U.S. 191, 196-97, 77 S. Ct. 281, 284, 1 L. Ed. 2d 246 (1957); (3) whether they were intoxicated or under the influence of drugs when consenting, *United States v. Rambo*, 789 F.2d 1289, 1297 (8th Cir. 1986); (4) whether they consented after being informed of their right to withhold consent or of their *Miranda* rights, *Watson*, 423 U.S. at 424-25, 96 S. Ct. at 828; *Bustamonte*, 412 U.S. at 226, 93 S. Ct. at 2047; and (5) whether, because they had been previously arrested, they were aware of the protections afforded to suspected criminals by the legal system, *Watson*, 423 U.S. at 424-25, 96 S. Ct. at 828; *Laing v. United States*, 891 F.2d 683, 686 (8th Cir. 1989); *United States v. Carter*, 884 F.2d 368, 375 (8th Cir. 1989).

In examining the environment in which consent was given, courts should ask whether the person who consented: (1) was detained and questioned for a long or short time, *Bustamonte*, 412 U.S. at 226, 93 S. Ct. at 2047; (2) was threatened, physically intimidated, or punished by the police, *Watson*, 423 U.S. at 424, 96 S. Ct. at 828; *Bustamonte*, 412 U.S. at 226, 93 S. Ct. at 2047; *Reck v. Pate*, 367 U.S. 433, 442-43, 81 S. Ct. 1541, 1547, 6 L. Ed. 2d 948 (1961); *Laing*, 891 F.2d at 686; (3) relied upon promises or misrepresentations made by the police, *Watson*, 423 U.S. at 424, 96 S. Ct. at 828; *Laing*, 891 F.2d at 686; *Carter*, 884 F.2d at 374-75; (4) was in custody or under arrest when the consent was given, *Watson*,

> 423 U.S. at 424, 96 S. Ct. at 828; (5) was in a public or a secluded place, *id.*; or (6) either objected to the search or stood by silently while the search occurred, *United States v. Olivier-Becerril*, 861 F.2d 424, 425-26 (5th Cir. 1988); *United States v. Espinosa*, 782 F.2d 888, 890-92 (10th Cir. 1986); *United States v. Lopez*, 777 F.2d 543, 546-48 (10th Cir. 1985).

Id., 906 F.2d at 380-81; *see United States v. Bradley*, 234 F.3d 363, 366 (8th Cir. 2000); *United States v. Carmen Zamoran-Coronel*, 231 F.3d 466, 469 (8th Cir. 2000).

The court in *Chaidez* explained further:

> These factors should not be applied mechanically, because "[t]he concept of reasonable suspicion, like probable cause, is not 'readily, or even usefully, reduced to a neat set of legal rules.'" *United States v. Sokolow*, 490 U.S. 1, 109 S. Ct. 1581, 1585, 104 L. Ed. 2d 1 (1989) (quoting *Illinois v. Gates*, 462 U.S. 213, 232, 103 S. Ct. 2317, 2329, 76 L. Ed. 2d 527 (1983)). Nevertheless, the factors are valuable as a guide to analysis.

Chaidez, 906 F.2d at 381.

Applying these factors to the circumstances of the present case is troublesome. Although Yang's personal characteristics (*i.e.*, his age, level of intelligence, etc.) do not detract from the voluntariness of his consent, the environment in which his consent was given seems, to the court, to be more coercive than not. Although Trooper Anderson did not threaten Yang or physically intimidate him, Yang had already been detained for more than 30 minutes for a simple window tinting violation. He had been told he could leave, and had begun to do so when he was called back for further discussion about whether the trooper could search his car. Once again, he was told he could leave and he unequivocally stated he was going to do so, and once again, he was drawn into further conversation, during which the trooper lied to Yang about the purpose for the consent-to-search form. The court finds a reasonable person in the same circumstances would not have felt free to leave the scene. *Cf. Bumper v. North Carolina*, 391 U.S. 543, 548-49, 88 S. Ct. 1788, 1792, 20 L. Ed. 2d

797 (1968) (consent must be something beyond mere acquiescence to lawful authority) Therefore, the court finds Yang's consent to search his vehicle was coerced.

The court also finds Trooper Anderson could not reasonably have believed Yang's consent was valid. He knew he had lied to Yang about the consent form, and he knew he had prevented Yang from leaving on two separate occasions, after telling Yang he was free to go. Therefore, the court finds no "good faith" belief existed that could remove the taint of the illegal detention and the coerced consent to search. *See Illinois v. Rodriguez*, 497 U.S. 177, 185-86, 110 S. Ct. 2793, 111 L. Ed. 2d 148 (1990) ("[W]hether or not the suspect has actually consented to a search, the Fourth Amendment requires only that the police reasonably believe the search to be consensual.").

For these reasons, the court finds the search of Yang's vehicle at the scene was unlawful. The trooper knew his intuitive suspicion was not enough to provide probable cause for a warrantless search or he would not have needed Yang's consent. Similarly, his suspicions, at this point[15], could not provide probable cause to obtain a warrant. The court therefore finds the evidence subsequently seized as a result of the search warrant should be suppressed as fruit of the poisonous tree.

Notably, should the trial court determine Yang's consent to the initial search of the car was, in fact, voluntary, then additional issues remain for analysis. These include whether the officers had the authority to detain Yang's vehicle to await the arrival of the K-9 unit, and to continue searching after Yang withdrew his consent and said he wanted to leave; whether the answer to the preceding question is even relevant, given that the officers found nothing incriminating in their warrantless search; and whether, given these additional considerations, the evidence obtained during the search pursuant to the warrant should be suppressed, either as fruit of the poisonous tree or because the warrant was issued without

[15]This is before the officer found the receipts inside the car that indicated Yang had been lying about his activities.

probable cause. However, it seems obvious that if the original detention was unlawful, the evidence seized all was the fruit of the unlawful detention, and that if the original detention was unlawful, the evidence seized all was seized lawfully. After Trooper Anderson discovered the suspicious paperwork from California during his initial search, Yang changed his story about his itinerary. At that point, Trooper Anderson had ample reason to detain the vehicle until the drug dog arrived. After the drug dog alerted to the vehicle, Trooper Anderson had probable cause to conduct a full search of the vehicle.

IV. CONCLUSION

For the reasons discussed above, **IT IS RECOMMENDED**, unless any party files objections[16] to the Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), within ten (10) days of the service of a copy of this report and recommendation, that Yang's motion to suppress (Doc. No. 18) be **granted**.

IT IS SO ORDERED.

DATED this 19th day of June, 2002.

PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

[16]Objections must specify the parts of the report and recommendation to which objections are made. Objections also must specify the parts of the record, including exhibits and transcript lines, which form the basis for such objections. *See* Fed. R. Civ. P. 72. Failure to file timely objections may result in waiver of the right to appeal questions of fact. *See Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L. Ed. 2d 435 (1985); *Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990).